

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GAIL D. BERGER and U.S. POSTAL SERVICE,
POST OFFICE, Barto, PA

*Docket No. 02-1750; Submitted on the Record;
Issued November 26, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has established that she sustained an injury in the performance of duty.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to establish that she sustained an injury in the performance of duty.

On March 20, 1999 appellant, then a 49-year-old rural letter carrier, filed an occupational disease claim alleging that her herniated disc at L5-S1 with compression of the nerve was caused by daily reaching, lifting, bending and turning while handling heavy and/or awkward objects. She stated that she bent her knees slightly, but reaching and lifting was very repetitive. Her claim was accompanied by a narrative statement describing the factors of her employment that caused her injury and medical evidence regarding her back condition.

By letter dated May 3, 1999, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish her claim. The Office further advised appellant of the type of factual and medical evidence that was necessary to establish her claim and to submit such evidence.

By decision dated July 19, 1999, the Office found the evidence of record insufficient to establish that appellant sustained an injury in the performance of duty. In a July 22, 1999 letter, appellant, through her counsel, requested an oral hearing before an Office representative.

By decision dated February 17, 2000, the hearing representative affirmed the Office's decision. In an August 1, 2001 letter, appellant, through her counsel, requested reconsideration of the hearing representative's decision.¹

¹ Appellant contended that she submitted a February 24, 2000 request for reconsideration of the hearing representative's decision. The Office, however, indicated that it did not receive this request. Appellant resubmitted her request for reconsideration of the hearing representative's decision.

In a November 1, 2001 decision, the Office denied modification of the prior Office decision.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

Appellant submitted several reports of Dr. Mary P. Fabian, a Board-certified family practitioner and her attending physician, finding that she sustained back conditions that were caused or aggravated by factors of her federal employment. These reports, however, are of limited probative value regarding whether appellant sustained an employment-related injury in that they do not provide any medical rationale explaining how or why her back condition was caused by factors of her employment. Appellant did not submit sufficient rationalized medical evidence to establish that she sustained a back injury in the performance of duty.

As appellant has failed to satisfy her burden of proof in this case, the Board finds that the Office properly denied her claim for compensation.

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁵ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

The November 1, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 26, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member